

The House Committee on State Institutions and Property offers the following substitute to HB 622:

A BILL TO BE ENTITLED  
AN ACT

To amend Article 6 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to agreements between chief judges of county courts or judges of municipal courts and corporations, enterprises, or agencies for probation services, so as to clarify certain limitations on the authority of the County and Municipal Probation Advisory Council; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 6 of Chapter 8 of Title 42 of the Official Code of Georgia Annotated, relating to agreements between chief judges of county courts or judges of municipal courts and corporations, enterprises, or agencies for probation services, is amended by revising Code Section 42-8-100, relating to jurisdiction of probation matters in ordinance violation cases, costs, agreements between chief judges of county courts or judges of municipal courts and corporations, enterprises, or agencies for probation services, as follows:

"42-8-100.

(a) As used in this article, the term:

(1) 'Council' means the County and Municipal Probation Advisory Council created under Code Section 42-8-101.

(2) 'Private probation officer' means a probation officer employed by a private corporation, private enterprise, private agency, or other private entity that provides probation services and who has supervisory authority over probationers as directed by court order.

(3) 'Probation officer' means a person employed to supervise defendants placed on probation by a county or municipal court for committing an ordinance violation or

misdemeanor and who has supervisory authority over probationers as directed by court order.

(b) Any county or municipal court which has original jurisdiction of ordinance violations or misdemeanors and in which the defendant in such a case has been found guilty upon verdict or any plea may, at a time to be determined by the court, hear and determine the question of the probation of such defendant.

(c) If it appears to the court upon a hearing of the matter that the defendant is not likely to engage in an unlawful course of conduct and that the ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law, the court in its discretion shall impose sentence upon the defendant but may stay and suspend the execution of the sentence or any portion thereof or may place him or her on probation under the supervision and control of a probation officer for the duration of such probation, subject to the provisions of this Code section. The period of probation or suspension shall not exceed the maximum sentence of confinement which could be imposed on the defendant.

(d) The court may, in its discretion, require the payment of a fine or costs, or both, as a condition precedent to probation.

(e) The sentencing judge shall not lose jurisdiction over any person placed on probation during the term of his or her probated sentence. The judge is empowered to revoke any or all of the probated sentence, rescind any or all of the sentence, or, in any manner deemed advisable by the judge, modify or change the probated sentence at any time during the period of time originally prescribed for the probated sentence to run.

(f) If a defendant is placed on probation pursuant to this Code section by a county or municipal court other than one for the county or municipality in which he or she resides for committing any ordinance violation or misdemeanor, such defendant may, when specifically ordered by the court, have his or her probation supervision transferred to the county or municipality in which he or she resides.

(g)(1) The chief judge of any court within the county, with the approval of the governing authority of that county, is authorized to enter into written contracts with corporations, enterprises, or agencies to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed on the defendant as well as any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in that court and placed on probation in the county. In no case shall a private probation corporation or enterprise be charged with the responsibility for supervising a felony sentence. The final contract negotiated by the chief judge with the private probation entity shall be attached to the approval by the governing authority of the county

62 to privatize probation services as an exhibit thereto. The termination of a contract for  
63 probation services as provided for in this subsection entered into on or after July 1, 2001,  
64 shall be initiated by the chief judge of the court which entered into the contract; and  
65 subject to approval by the governing authority of the county which entered into the  
66 contract and in accordance with the agreed upon, written provisions of such contract. The  
67 termination of a contract for probation services as provided for in this subsection in  
68 existence on July 1, 2001, and which contains no provisions relating to termination of  
69 such contract shall be initiated by the chief judge of the court which entered into the  
70 contract, and subject to approval by the governing authority of the county which entered  
71 into the contract and in accordance with the agreed upon, written provisions of such  
72 contract. The council shall not have authority to alter, cancel, void, dictate the terms of,  
73 or otherwise interfere with any contract lawfully entered into between a private probation  
74 entity and a judge or entered into between a private probation entity and a governing  
75 authority or other agreement entered into pursuant to this subsection.

76 (2) The chief judge of any court within the county, with the approval of the governing  
77 authority of that county, is authorized to establish a county probation system to provide  
78 probation supervision, counseling, collection services for all moneys to be paid by a  
79 defendant according to the terms of the sentence imposed on the defendant as well as any  
80 moneys which by operation of law are to be paid by the defendant in consequence of the  
81 conviction, and other probation services for persons convicted in that court and placed  
82 on probation in the county.

83 (h)(1) The judge of the municipal court of any municipality or consolidated government  
84 of a municipality and county of this state, with the approval of the governing authority  
85 of that municipality or consolidated government, is authorized to enter into written  
86 contracts with private corporations, enterprises, or agencies to provide probation  
87 supervision, counseling, collection services for all moneys to be paid by a defendant  
88 according to the terms of the sentence imposed and any moneys which by operation of  
89 law are to be paid by the defendant in consequence of the conviction, and other probation  
90 services for persons convicted in such court and placed on probation. The final contract  
91 negotiated by the judge with the private probation entity shall be attached to the approval  
92 by the governing authority of the municipality or consolidated government to privatize  
93 probation services as an exhibit thereto. The council shall not have authority to alter,  
94 cancel, void, dictate the terms of, or otherwise interfere with any contract lawfully  
95 entered into between a private probation entity and a judge or entered into between a  
96 private probation entity and a governing authority or other agreement entered into  
97 pursuant to this subsection.

(2) The judge of the municipal court of any municipality or consolidated government of a municipality and county of this state, with the approval of the governing authority of that municipality or consolidated government, is authorized to establish a probation system to provide probation supervision, counseling, collection services for all moneys to be paid by a defendant according to the terms of the sentence imposed and any moneys which by operation of law are to be paid by the defendant in consequence of the conviction, and other probation services for persons convicted in such court and placed on probation."

## SECTION 2.

Said article is further amended by revising Code Section 42-8-101, relating to the County and Municipal Probation Advisory Council, as follows:

"42-8-101.

(a) There is created the County and Municipal Probation Advisory Council, to be composed of one superior court judge designated by The Council of Superior Court Judges of Georgia, one state court judge designated by The Council of State Court Judges of Georgia, one municipal court judge designated by the Council of Municipal Court Judges of Georgia, one sheriff appointed by the Governor, one probate court judge designated by The Council of Probate Court Judges of Georgia, one magistrate designated by the Council of Magistrate Court Judges, the commissioner of corrections or his or her designee, one public probation officer appointed by the Governor, one private probation officer or individual with expertise in private probation services by virtue of his or her training or employment appointed by the Governor, one mayor or member of a municipal governing authority appointed by the Governor, and one county commissioner appointed by the Governor. Members of the council appointed by the Governor shall be appointed for terms of office of four years. With the exceptions of the public probation officer, the county commissioner, the sheriff, the mayor or member of a municipal governing authority, and the commissioner of corrections, each designee or representative shall be employed in their representative capacity in a judicial circuit operating under a contract with a private corporation, enterprise, or agency as provided under Code Section 42-8-100. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment. In the event of death, resignation, disqualification, or removal for any reason of any member of the council, the vacancy shall be filled in the same manner as the original appointment and any successor shall serve for the unexpired term. Such council shall promulgate rules and regulations consistent with this article regarding ~~contracts or agreements for~~ the provision of probation services and the conduct of business by private entities providing probation services and county,

municipal, or consolidated governments establishing probation systems as authorized by this article; provided, however, that such rules and regulations shall not be adopted and applied so as to void or materially alter an existing contract for probation services and shall not be applied retroactively to any contract existing at the time such rules and regulations are adopted.

(b) The business of the council shall be conducted in the following manner:

(1) The council shall annually elect a chairperson and a vice chairperson from among its membership. The offices of chairperson and vice chairperson shall be filled in such a manner that they are not held in succeeding years by representatives of the same component (law enforcement, courts, corrections) of the criminal justice system;

(2) The council shall meet at such times and places as it shall determine necessary or convenient to perform its duties. The council shall also meet on the call of the chairperson or at the written request of three of its members;

(3) The council shall maintain minutes of its meetings and such other records as it deems necessary; and

(4) The council shall adopt such rules for the transaction of its business as it shall desire and may appoint such committees as it considers necessary to carry out its business and duties.

(c) Members of the council shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the council is in attendance at a meeting of such council, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal motor vehicle in connection with such attendance as members of the General Assembly receive. The allowances authorized by this subsection shall not be received by any member of the council for more than 12 days in a single calendar year unless additional days are authorized by the Governor. Payment of such expense and travel allowance shall be subject to availability of funds and shall be in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance.

(d) The council is assigned to the Administrative Office of the Courts for administrative purposes only in accordance with Code Section 50-4-3. The funds necessary to carry out the provisions of this article shall come from funds appropriated to the Administrative Office of the Courts or otherwise available to the council. The council is authorized to accept and use grants of funds for the purpose of carrying out the provisions of this article.

(e) The council shall have the following powers and duties:

(1) To promulgate rules and regulations for the administration of the council, including rules of procedure for its internal management and control;

(2) To review the uniform professional standards for private probation officers and uniform contract standards for private probation contracts established in Code Section 42-8-102 and submit a report with its recommendations to the General Assembly;

(3) To promulgate rules and regulations consistent with this article to implement those uniform professional standards for probation officers employed by a governing authority of a county, municipality, or consolidated government that has established probation services and uniform agreement standards for the establishment of probation services by a county, municipality, or consolidated government established in Code Section 42-8-102;

(4) To promulgate rules and regulations establishing a 40 hour initial orientation for newly hired private probation officers and for 20 hours per annum of continuing education for private probation officers, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a probation or parole officer basic course of training certified by the Georgia Peace Officer Standards and Training Council or any private probation officer who has been employed by a private probation corporation, enterprise, or agency for at least six months as of July 1, 1996; and provided, further, that employees of private probation entities who are not serving as probation officers shall not be required by the council to attend training, including the training mandated by this paragraph;

(5) To promulgate rules and regulations establishing a 40 hour initial orientation for probation officers employed by a county, municipality, or consolidated government that has established probation services and for 20 hours per annum of continuing education for such probation officers, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a probation or parole officer basic course of training certified by the Georgia Peace Officer Standards and Training Council or any probation officer who has been employed by a county, municipality, or consolidated government as of March 1, 2006; and provided, further, that employees of local governing probation entities who are not serving as probation officers shall not be required by the council to attend training, including the training mandated by this paragraph;

(6) To promulgate rules and regulations relative to compliance with the provisions of this article, and enforcement mechanisms that may include, but are not limited to, the imposition of sanctions and fines which may not exceed a total of \$1,000.00 per incident of noncompliance and the voiding of contracts or agreements; provided, however, that no sanction or fine shall be entered against any party until such party has had an opportunity to an administrative hearing pursuant to Chapter 13 of Title 50;

(7) To promulgate rules and regulations establishing registration for any private corporation, private enterprise, private agency, county, municipality, or consolidated government providing probation services under the provisions of this article, subject to the provisions of Code Section 42-8-107; provided, however, that the council shall not require as a condition of registration that a private or public entity or any person allow the council to:

(A) Conduct warrantless searches and seizures of private property;

(B) Void or alter private agreements or contracts;

(C) Trespass upon private property; or

(D) Issue subpoenas or orders for the production of documents unrelated to the supervision of or collection of funds from probationers;

(8) To produce an annual summary report. Such report shall not contain information identifying individual private corporations, nonprofit corporations, or enterprises or their contracts; and

(9) To promulgate rules and regulations requiring criminal record checks of private probation officers registered under this Code section and establishing procedures for such criminal record checks. The Administrative Office of the Courts on behalf of the council shall conduct a criminal records check for probation officers as provided in Code Section 35-3-34. No applicant shall be registered who has previously been convicted of a felony. The council shall promulgate rules and regulations regarding registration requirements, including restrictions regarding misdemeanor convictions. An agency or private entity shall also be authorized to conduct a criminal history background check of a person employed as a probation officer or an applicant for a probation officer position. The criminal history check may be conducted in accordance with Code Section 35-3-34 and may be based upon the submission of fingerprints of the person whose records are requested. The Georgia Bureau of Investigation shall submit the fingerprints to the Federal Bureau of Investigation under the rules established by the United States Department of Justice for processing and identification of records. The federal record, if any, shall be obtained and returned to the requesting entity or agency."

### SECTION 3.

Said article is further amended by revising Code Section 42-8-102, relating to uniform professional standards and uniform contract standards, as follows:

"42-8-102.

(a) The uniform professional standards contained in this subsection shall be met by any person employed as and using the title of a private probation officer or probation officer. Any such person shall be at least 21 years of age at the time of appointment to the position

of private probation officer or probation officer and must have completed a standard two-year college course or have four years of law enforcement experience; provided, however, that any person employed as a private probation officer as of July 1, 1996, and who had at least six months of experience as a private probation officer or any person employed as a probation officer by a county, municipality, or consolidated government as of March 1, 2006, shall be exempt from such college requirements. Every private probation officer shall receive an initial 40 hours of orientation upon employment and shall receive 20 hours of continuing education per annum as approved by the council, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a probation or parole officer basic course of training certified by the Peace Officer Standards and Training Council or any private probation officer who has been employed by a private probation corporation, enterprise, or agency for at least six months as of July 1, 1996, or any person employed as a probation officer by a county, municipality, or consolidated government as of March 1, 2006. In no event shall any person convicted of a felony be employed as a probation officer or utilize the title of probation officer. Employees of public or private probation entities who are not serving as probation officers or private probation officers shall not be required to attend the training required by this subsection.

(b) The uniform contract standards contained in this subsection shall apply to all private probation contracts executed under the authority of Code Section 42-8-100. The terms of any such contract shall state, at a minimum:

- (1) The extent of the services to be rendered by the private corporation or enterprise providing probation supervision;
- (2) Any requirements for staff qualifications, to include those contained in this Code section as well as any surpassing those contained in this Code section;
- (3) Requirements for criminal record checks of staff in accordance with the rules and regulations established by the council;
- (4) Policies and procedures for the training of ~~staff~~ private probation officers and probation officers that comply with this article ~~rules and regulations promulgated by the council;~~
- (5) Bonding of staff and liability insurance coverage;
- (6) Staffing levels and standards for offender supervision, including frequency and type of contacts with offenders;
- (7) Procedures for handling the collection of all court ordered fines, fees, and restitution;
- (8) Procedures for handling indigent offenders to ensure placement of such indigent offenders irrespective of the ability to pay;



(9) Circumstances under which revocation of an offender's probation may be recommended;

(10) Reporting and record-keeping requirements; and

(11) Default and contract termination procedures.

(c) The uniform contract standards contained in this subsection shall apply to all counties, municipalities, and consolidated governments that enter into agreements with a judge to provide probation services under the authority of Code Section 42-8-100. The terms of any such agreement shall state at a minimum:

(1) The extent of the services to be rendered by the local governing authority providing probation services;

(2) Any requirements for staff qualifications, to include those contained in this Code section;

(3) Requirements for criminal record checks of staff in compliance with the rules and regulations established by the council;

(4) Policies and procedures for the training of ~~staff~~ private probation officers and probation officers that comply with this article ~~the rules and regulations established by the council~~;

(5) Staffing levels and standards for offender supervision, including frequency and type of contacts with offenders;

(6) Procedures for handling the collection of all court ordered fines, fees, and restitution;

(7) Circumstances under which revocation of an offender's probation may be recommended;

(8) Reporting and record-keeping requirements; and

(9) Default and agreement termination procedures.

(d) The council shall review the uniform professional standards and uniform contract and agreement standards contained in subsections (a), (b), and (c) of this Code section and shall submit a report on its findings to the General Assembly. The council shall submit its initial report on or before January 1, 2007, and shall continue such reviews every two years thereafter. Nothing contained in such report shall be considered to authorize or require a change in the standards without action by the General Assembly having the force and effect of law. This report shall provide information which will allow the General Assembly to review the effectiveness of the minimum professional standards and, if necessary, to revise these standards. This subsection shall not be interpreted to prevent the council from making recommendations to the General Assembly prior to its required review and report. Nothing contained in this article shall be construed as providing the council with authority to require additional contract or training requirements, to impose additional sanctions or fines, or to establish additional qualifications or standards for public or private probation

entities or their employees other than those requirements, standards, sanctions, or qualifications established by this article; provided, however, that a judge, when contracting for probation services and as a part of such agreement as expressed by its terms, may require additional standards, training, sanctions, or qualifications as deemed necessary and not in conflict with the requirements of this article."

#### SECTION 4.

Said article is further amended by revising Code Section 42-8-107, relating to registration with the County and Municipal Probation Advisory Council, as follows:

"42-8-107.

(a)(1) All private corporations, private enterprises, and private agencies contracting or offering to contract for probation services shall register with the council before entering into any contract to provide services. The information included in such registration shall include the name of the corporation, enterprise, or agency, its principal business address and telephone number, the name of its agent for communication, and other information in such detail as the council may require. ~~No registration fee shall be required.~~ An annual registration fee not to exceed \$500.00 may be charged by the council.

(2) Any private corporation, private enterprise, or private agency required to register under the provisions of paragraph (1) of this subsection which fails or refuses to do so shall be subject to ~~revocation of any existing contracts, in addition to any other~~ fines or sanctions imposed by the council as provided in subsection (e) of Code Section 42-8-101; provided, however, that the council shall not be permitted to refuse to accept the registration or cancel or suspend the registration of any private probation entity which satisfies the requirements of this article, and noncompliance with any rule or regulation initiated by the council which creates a standard or qualification in addition to the standards or qualifications established by this article shall not be a basis for refusing to accept the registration or for canceling or suspending the registration of any private probation entity.

(b)(1) All counties, municipalities, and consolidated governments agreeing or offering to agree to establish a probation system shall register with the council before entering into an agreement with the court to provide services. The information included in such registration shall include the name of the county, municipality, or consolidated government, the principal business address and telephone number, a contact name for communication with the council, and other information in such detail as the council may require. No registration fee shall be required.

(2) Any county, municipality, or consolidated government required to register under the provisions of paragraph (1) of this subsection which fails or refuses to do so shall be

subject to ~~revocation of existing agreements, in addition to any other~~ sanctions imposed by the council as provided in subsection (e) of Code Section 42-8-101; provided, however, that the council shall not be permitted to refuse to accept the registration or cancel or suspend the registration of any government probation entity which satisfies the requirements of this article, and noncompliance with any rule or regulation initiated by the council which creates a standard or qualification in addition to the standards or qualifications established by this article shall not be a basis for refusing to accept the registration or for canceling or suspending the registration of any government probation entity."

#### SECTION 5.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

#### SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.